

April 3, 2001

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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RECONSIDERED AND REVISED:
REPORT AND DECISION ON APPLICATION FOR PRELIMINARY PLAT APPROVAL

SUBJECT: Department of Development and Environmental Services File No. **L99P3018**

POTTER SUBDIVISION
Preliminary Plat Application

Location: West side of 132nd Avenue Southeast at the intersection of
132nd Avenue SE/SE 288th Street, extending approximately
300 feet south; and between 132nd Avenue Southeast and
128th Avenue Southeast (if constructed)

Applicants: **Martin and Charlotte Potter**
c/o DBM Consulting Engineers
502 – 16th Street NE #312
Auburn, WA 98002
Telephone: (253) 887-0924

King County: Department of Development and Environmental Services
Land Use Services Division, *represented by*
Lanny Heno**ch**, Current Planning Section
900 Oakesdale Avenue Southwest
Renton, Washington 98055-1219
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SUMMARY OF DECISION:

Department's Preliminary Recommendation:	Approve, subject to conditions
Department's Final Recommendation:	Approve, subject to conditions, modified
Examiner's Decision:	Approve, subject to conditions, modified
Examiner's Reconsidered Decision:	Approve, subject to conditions, modified

PRELIMINARY MATTERS:

Complete application:	December 21, 1999
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EXAMINER PROCEEDINGS:

Hearing Opened:	February 22, 2001
Hearing Closed:	February 22, 2001
Examiner's First Report:	March 9, 2001
Appeal filed:	March 22, 2001
Examiner's Revised Report:	April 3, 2001

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

ISSUES/TOPICS ADDRESSED:

- Density
- Recreation
- Open Space
- Fee-in-lieu
- Special overlay (SO)

SUMMARY:

Grants preliminary plat approval to a subdivision of 9.77 acres into 32 single-family residential building lots.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. **Reconsidered and Revised Examiner's Report.** On March 9, 2001, the Examiner issued a report and decision regarding the preliminary plat application for Potter subdivision. Subsequently, DBM Consulting Engineers, representing the Applicants, filed appeal with the Metropolitan King County Council regarding preliminary approval Condition No. 3 as established by the Examiner's report and decision. That condition states:

“The plat shall comply with the base density and minimum density requirements of the R-1 and R-4 zone classifications for the respective portions of the site, however, a density transfer of one lot from the R-1 portion to the R-4 portion is permitted. Since a total of 31 lots are permitted on the site under the base density requirements, the subject plat shall be reduced to no more than 31 lots.”

This condition had been a subject of controversy in the hearing. See Finding No. 7, below. In his March 9, 2001 report and decision, the Examiner concluded that the Department correctly interpreted KCC 21A. 06.1172 and its definition of site area—an interpretation which the Applicant had challenged in the hearing.

The Examiner's March 9, 2001 report and decision made no changes to Condition No. 3 as quoted above. The Appellant now appeals Condition No. 3, noting that a site plan modification was discussed during the public hearing which would allow the Applicant to obtain an additional lot (32 total). The Department had no objection to the plan modification contemplated by the Applicant. The plan modification would have reduced the area required for right-of-way dedication to Southeast 288th Street. The principal problem with Condition No. 3 in the Examiner's first report and decision is that it allows the Applicant no flexibility to pursue that alternative site plan. The Department also agreed during the hearing that a site plan modification of the size and nature suggested by the Applicant would not require a continued or re-opened hearing to accommodate further Departmental review.

2. General Information.

Owner/Developer:	Martin and Charlotte Potter 2811 – 132 nd Avenue SE Auburn, WA 98092
Engineer:	DBM Consulting Engineers 502 – 16 th Street NE, #312 Auburn, WA 98002
Location:	West side of 132 nd Avenue Southeast at the intersection of 132 nd Avenue SE/SE 288 th Street, extending approximately 300 feet south; and between 132 nd Avenue Southeast and 128 th Avenue Southeast (if constructed)
STR:	04-21-05
Zoning:	R-1-SO and R-4-SO
Acreage:	9.77
Number of Lots:	32
Typical Lot Size:	Ranges from 5,838 square feet to 10, 136 square feet, with one lot sized 1.46 acres (63,546 square feet)
Proposed Use:	Detached single-family residences
Sewage Disposal:	Soos Creek Water and Sewer District
Water Supply:	Water District No. 111
Fire District:	Fire District No. 44
School District:	Auburn School District No. 408
Complete Application Date:	December 21, 2000

The Applicant's willingness to modify the site plan in order to meet both the density objectives of the Applicant and the calculated density limits of the R-1 and R-4 zoning classifications are commended. Condition No. 3 is revised below on page 7 in a manner which will allow the Applicant to modify the site plan in order to gain an additional lot. The Applicant need merely shift proposed Lot No. 28 forty feet westward. That simple change will reduce the required dedication area (accommodating proposed Southeast 288th Street) sufficiently to bring the calculated site area up to an amount that will garner an additional unit of base density.

3. **Proposal.** Martin and Charlotte Potter (the "Applicant"), represented by DBM Consulting Engineers, propose to subdivide a 9.77 acre parcel into 33 single-family residential building lots. Proposed lot sizes range from 5,838 square feet to 10,136 square feet, with one lot (containing an existing single-family residence to be retained) comprising 1.46 acres. The Applicant's preliminary plat drawing is attached to the February 22, 2001 preliminary report (Exhibit No. 2) prepared by the Department of Development and Environmental Services ("DDES"). It is also included in the hearing record as Exhibit No. 6.
4. **State Environmental Policy Act (SEPA).** On January 19, 2001 DDES issued a threshold determination of non-significance for the proposed development of Potter Plat. That is, pursuant to the State Environmental Policy Act, the Department published its determination that it would not require the Applicant to prepare an Environmental Impact Statement ("EIS") because the proposal would not cause probable significant adverse impacts. DDES based this determination

on its review of the Applicant's environmental check-list and numerous other relevant environmental documents. No agency, person, tribe or other entity appealed that determination. The administrative environmental review record is incorporated in this hearing record.

5. **Department Recommendation.** DDES recommends granting preliminary approval to Potter Plat, subject to the 21 conditions of final plat approval stated on pages 10 through 15 of the DDES preliminary report to the Examiner (Exhibit No. 2), plus a modification to recommended condition 17.a. Based on KCRS Section 5.03, recommended condition 17.a requires that trees shall be planted at a rate of one tree for every forty feet of frontage. During the course of hearing debate regarding the distribution of required open space (see finding No. 8, below), DDES addressed the Applicant's desire to screen visually the surface water management facility (retention/detention pond) by proposing the following condition 17.a amendatory language: "Trees shall be planted at a rate of one tree for every forty feet of frontage *or closer at the Applicant's option.*"
6. **Applicant's Response.** The Applicant accepts the Department's recommendation as described in finding No. 4, above *except* for the following objections and concerns:
 - A. Base Density, recommended condition No. 3.
This issue is related to the zoning and development code definition of "site area" and is addressed in finding No. 6, below.
 - B. On-site Recreation Space, recommended condition No. 15.
The Applicant would prefer to pay a fee-in-lieu of providing recreational open space. This issue concerns interpretation of KCC 21A.14.180 through KCC 21A.14.190, and is addressed in finding No. 7, below.
 - C. Distribution of Open Space Required by Regulatory Special Overlay (SO), recommended condition No. 19.a.
The Applicant opposes the Department's recommendation to reallocate a 13-foot-wide strip proposed to be located between the retention/detention drainage pond and the proposed principal access public street. This issue is reviewed further in finding No. 8, below.
7. **Density.** As illustrated by the Applicant's preliminary plat drawing (Exhibit No. 6), the proposed plat exceeds the base density for the property by two (2) lots. However, the Applicant argues that the base density as determined by the Department relies upon a misinterpretation of the word "required" as stated in the zoning code definition of *site area*. KCC 21A.06.1172 defines *site area*:

Site area shall be the following horizontal area of a project site, less the following:

1. Areas below the ordinary high-water mark;
2. Areas which are *required* to be dedicated on the perimeter of a project site for public rights-of-way.
[*italics added*]

The Applicant argues that "required" as used in the KCC 21A.06.1172 definition should apply only to rights-of-way which inescapably must abut existing right-of-way—for instance, the right-

of-way abutting 132nd Avenue Southeast. The Applicant has no objection to subtracting the right-of-way to be dedicated to 132nd Avenue Southeast when calculating “site area.” However, the Applicant argues, the proposed access street along the north boundary of the subject property, proposed Southeast 288th Street, is not truly “required.” It is optional in the sense that an alternative site plan could eliminate some, most, or perhaps all of it. Therefore, the Applicant reasons, the proposed Southeast 288th Street right-of-way along the north perimeter of the subject property, should not be regarded as “required.”

The Department stands by its interpretation. A perimeter street requires dedication of right-of-way. That required dedication of right-of-way must be subtracted from the “site area” calculation. The Department agrees that the site plan is optional in the sense that it is the Applicant’s own creation in response to applicable regulations. The Applicant is free to create another response, perhaps one with less perimeter right-of-way. However, the Department insists, when the Applicant proposes perimeter right-of-way, dedication is *required*, and when that dedication is required, the dedicated area must be subtracted from the *site area*. The base density of the project, in turn, depends upon the *site area*.

Responding to the Department’s arguments, the Applicant observes that it could gain at least one of the “lost” lots by doing precisely what the Department suggests—that is, by modifying the site plan shown as exhibit No. 6. In this case, the modification necessary to gain an additional lot is modest. The Applicant need merely shift proposed lot 28 forty-feet westward. That simple change will reduce the required dedication area (accommodating proposed Southeast 288th Street) sufficiently to bring the calculated site area up to an amount that will garner an additional unit of base density. The Applicant declined an opportunity to continue the hearing in order to investigate further redesign.

8. **Recreational Open Space.** Recommended condition No. 15 requires the Applicant to provide “suitable on-site recreation space consistent with the requirements of KCC 21A.14.180 and KCC 21A.14.190.” KCC 21A.14.180 requires residential developments having a density of eight or fewer units per acre to provide recreation space for leisure, play and sports activities in the amount of 390 square feet per unit. KCC 21A.14.190 requires development of the on-site recreation area with “children play areas,” “. . . except when facilities are available to the public within one-quarter mile that are developed as parks or playgrounds, and that are accessible without crossing of arterial streets.”

The Applicant asks to be allowed to pay a “fee-in-lieu” of providing on-site recreation space as referred to in KCC 21A.14.185. The Department responds that KCC 21A.14.185 itself states that acceptance of a fee-in-lieu “is discretionary, and may be permitted if . . . the recreation space provided within a County park within the vicinity will be of greater benefit to the prospective residents of the development.” The following findings are relevant.

- A. The nearest County park that is developed with recreational facilities is located approximately 2 ½ miles away.
- B. Undeveloped County park property exists approximately 775 feet south of the subject plat. However, this property is undeveloped and the County Parks Department states that it has no funding to develop this site as a park.
- C. Abutting the southerly boundary of the subject property, the Auburn School district proposes to locate a new high school. However, KCC 21A.14.180

through --.190 provide no deference to public school facilities. In fact, KCC 21A.14.190 specifically refers to a County park containing children's play facilities. Further, the Department argues, high schools do not typically provide "children's play areas" as emphasized by KCC 21A.14.190.

9. **Native Growth Permanent Open Space Tract.** Special Overlay 210 (SO210) acts as supplemental zoning to the portion of the subject property that is classified R-1 (and to surrounding vicinity properties similarly classified). It requires that 70% of the R-1 classified portion of the property be placed in a contiguous permanent open space tract retaining the native vegetation. SO210 also limits clearing and developing to a clustered 30% of the site—in this case, to the R-1 classified portion of this site. For the proposed plat of Potter Plat, the Applicant proposes to use the developable 30% of the R-1 classified portion of the property as access street (Southeast 277th Street) and as retention/detention drainage facilities serving the remainder R-4 portion of the site. The 33 proposed lots will be located on the R-4 portion of the property.

The R-1 classified property is divided into two portions—tract A (storm drainage bond) and tract B (undisturbed natural area). The Applicant proposes to locate tract A thirteen feet south from proposed Southeast 277th Street, thereby leaving a thirteen-foot-wide strip of tract B between the R/D facility and Southeast 277th Street right-of-way. The Department opposes this design concept, arguing that the practical necessity of grading, excavation and R/D facility development will unavoidably damage the 13-foot-wide strip. The Applicant counters that there isn't really anything to save within that 13-foot-wide strip, anyway. In fact, the eastern 235 feet of the subject property (that is, the R-1 classified portion of the property) is pastureland, moderately developed with agricultural structures. The 13-foot-wide strip at issue here is covered with pasture vegetation, not natural native vegetation. The Applicant, of course, accepts the Department's recommendations to implement SO210 with a "reforestation plan."

10. Except as noted above, the facts and analysis contained in the Land Use Services Division Preliminary Report prepared for the February 22, 2001 hearing are correct and are incorporated here by reference. A copy of the Land Use Services Division report will be attached to those copies of the examiner's report which are submitted to the King County Council.
11. Any portion of any of the following conclusions that may be construed as a finding is incorporated here by this reference.

CONCLUSIONS:

1. Any portion of any of the above findings that may be construed as a conclusion is incorporated here by this reference.
2. The Department correctly interprets KCC 21A.06.1172 and its definition of site area. When the Applicant proposes a perimeter road, that road right-of-way is "required to be dedicated." It therefore must be subtracted from the calculation of "site area." The fact that other conceptual or theoretical options are available does not exempt the actual proposal from the regulatory language that applies.
3. Again, regarding the standards for requiring open space and for allowing a payment (fee-in-lieu) of that open space, the Department's interpretation of applicable code is correct. For the reasons indicated in finding 7, above, the fee-in-lieu option must be excluded from final plat review.

4. In the case of recommended condition No. 19.a, the Department seeks to preserve a thirteen-foot-wide strip of “not much.” Because the Applicant has agreed to SO210 reforestation standards, it makes little difference whether a grader-blade inadvertently encroaches within the thirteen-foot-wide strip during the development of the R/D drainage facility. It will be repaired and reforested in the same manner that the rest of the pasture land will be. In the long term, such revegetation will benefit the future homeowners by enhancing the visual appearance of the entry into their neighborhood. On the other hand, it is difficult to ascertain any particular public benefit that would arise as a result of moving the R/D drainage facility northward thirteen feet. For this reason, recommended condition No. 19.a as stated in the Department’s preliminary report (Exhibit No. 2) is deleted in the decision which follows, below.
5. If approved subject to the conditions recommended below, the proposed subdivision will comply with the goals and objectives of the King County Comprehensive Plan, Subdivision and Zoning Codes, and other official land use controls and policies of King County.
6. If approved subject to the conditions recommended below, this proposed subdivision will make appropriate provision for the public health, safety and general welfare and for open spaces, for drainage ways, streets, other public ways, transit stops, potable water supply, sanitary wastes, parks and recreations, playgrounds, schools and school grounds, and safe walking conditions for students who only walk to school; and it will serve the public use and interest.
7. The conditions for final plat approval recommended below are in the public interest and are reasonable requirements to mitigate the impacts of this development upon the environment.
8. The dedications of land or easements within and adjacent to the proposed plat, as recommended by the conditions for final plat approval or as shown on the proposed preliminary plat submitted by the applicant, are reasonable and necessary as a direct result of the development of this proposed plat.

DECISION:

The proposed plat of Potter Plat is **GRANTED PRELIMINARY APPROVAL**; *SUBJECT* to the following conditions of final plat approval:

1. Compliance with all platting provisions of Title 19 of the King County Code.
2. All persons having an ownership interest in the subject property shall sign on the face of the final plat a dedication which includes the language set forth in King County Council Motion No. 5952.
3. The plat shall comply with the base density and minimum density requirements of the R-1 and R-4 zone classifications for the respective portions of the site, however, a density transfer of one lot from the R-1 portion to the R-4 portion is permitted. As shown in Exhibit No. 6, a total of 31 lots are permitted on the site under the base density requirements, thereby requiring the subject plat to be reduced to no more than 31 lots. However, a minor site plan modification that reduces the area of required right-of-way dedication sufficient to achieve 32 lots will be acceptable. Such a site plan modification, provided that it meets all other applicable standards, may be accepted as justification for allowing 32 lots.

All lots shall meet the minimum dimensional requirements of the R-1 and R-4 zone

classifications and shall be generally as shown on the face of the approved preliminary plat, except that minor revisions to the plat which do not result in substantial changes may be approved at the discretion of the Department of Development and Environmental Services.

A note shall be placed on the final plat which indicates that Lot 1 cannot be further subdivided, pursuant to the provisions of KCC 21A.12.090, unless the zoning of the subject plat is changed to a more dense zone classification.

4. The applicant must obtain final approval from the King County Health Department. Existing wells and septic tanks on the site shall be decommissioned, consistent with County and State law, as determined necessary by the Health Department.
5. All construction and upgrading of public and private roads shall be done in accordance with the King County Road Standards, established and adopted by Ordinance No. 11187.
6. The applicant must obtain the approval of the King County Fire Protection Engineer, to demonstrate compliance with the fire hydrant, water main, and fire flow standards of Chapter 17.08 of the King County Code.
7. Final plat approval shall require full compliance with the drainage provisions set forth in King County Code 9.04. Compliance may result in reducing the number and/or location of lots as shown on the preliminary approved plat. Preliminary review has identified the following conditions of approval which represent portions of the drainage requirements. All other applicable requirements in KCC 9.04 and the King County Surface Water Design Manual (KCSWDM) must also be satisfied during engineering and final review.
 - a. Drainage plans and analysis shall comply with the 1998 King County Surface Water Design Manual and applicable updates adopted by King County. DDES approval of the drainage and roadway plans is required prior to any construction.
 - b. Current standard plan notes and ESC notes, as established by LUSD Engineering Review, shall be shown on the engineering plans.
 - c. The following note shall be shown on the final recorded plat:

"All building downspouts, footing drains, and drains from all impervious surfaces such as patios and driveways shall be connected to the permanent storm drain outlet as shown on the approved construction drawings # _____ on file with DDES and/or the King County Department of Transportation. This plan shall be submitted with the application of any building permit. All connections of the drains must be constructed and approved prior to the final building inspection approval. For those lots that are designated for individual lot infiltration systems, the systems shall be constructed at the time of the building permit and shall comply with plans on file."
 - d. The stormwater detention facility shall conform to the Level 2 Flow Control Methodology as required by the 1998 KCSWDM.
8. The proposed subdivision shall comply with the 1993 King County Road Standards (KCRS) including the following requirements: .

- a. The frontage of the subdivision along 132nd Ave. SE shall be improved to the urban, principal arterial standard. This shall include the construction of a bicycle lane along the frontage of the site.

Documentation shall be provided to demonstrate that the entire frontage of the site will meet the stopping sight distance (SSD) requirement of the Road Standards. If the SSD standard is not met, both frontage and off-site improvements shall be provided to meet the standard.

- b. SE 288th St. (i.e., the 30-foot-wide right-of-way along the north boundary of the site) shall be constructed to the urban half-street standard. Adequate right-of-way for a standard neighborhood collector horizontal curve to the north shall be provided at the western terminus of SE 288th St. on the subject plat.
 - c. The remaining streets in the subject plat (i.e., the internal loop access road serving Lots 2 through 33) shall be constructed to the urban subaccess street standard.
 - d. One-Hundred-Thirty-Second Avenue Southeast along the frontage of the site may require a design for a bus zone and turn outs. As specified in KCRS 2.16, the applicant's design engineer shall contact METRO and the Auburn School District to determine if a bus zone is needed, and if so, the specific design requirements.
 - e. Modifications to the above road conditions may be considered according to the variance procedures in Section 1.08 of the KCRS.
9. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council, prior to final plat recording.
 10. The applicant or subsequent owner shall comply with King County Code 14.75, Mitigation Payment System (MPS), by paying the required MPS fee and administration fee as determined by the applicable fee ordinance. The applicant has the option to either: (1) pay the MPS fee at final plat recording, or (2) pay the MPS fee at the time of building permit issuance. If the first option is chosen, the fee paid shall be the fee in effect at the time of plat application and a note shall be placed on the face of the plat that reads, "All fees required by King County Code 14.75, Mitigation Payment System (MPS), have been paid." If the second option is chosen, the fee paid shall be the amount in effect as of the date of building permit application.
 11. Lots within this subdivision are subject to KCC 21A.43 and Ordinance 14009 which imposed impact fees to fund school system improvements needed to serve new development. As a condition of final approval, 50% of the impact fees due for the plat shall be assessed and collected immediately prior to recording, using the fee schedules in effect when the plat receives final approval. The balance of the assessed fee shall be allocated evenly to the dwelling units in the plat and shall be collected prior to building permit issuance.
 12. There shall be no direct vehicular access to or from SE 288th St. (along the north boundary of the site) and 132nd Ave. SE, from those lots which abut these two streets. A note to this effect shall appear on the final plat and engineering plans.

13. Twenty feet of additional right-of-way for 132nd Ave. SE shall be dedicated along the east property line of the site, to provide for a total of 50 feet of right-of-way from centerline.
14. A planter island, if proposed within the cul-de-sac bulb for the on-site road, shall be maintained by the abutting lot owners or the homeowners association. If the island is proposed, a note indicating who is responsible for maintenance of the island shall be stated on the face of the final plat.
15. Suitable on-site recreation space shall be provided consistent with the requirements of KCC 21A.14.180 and KCC 21A.14.190 (i.e., sport court, children's play equipment, picnic tables, benches, etc.).
 - a. An overall conceptual recreation space plan shall be submitted for review and approval by LUSD, with the submittal of the engineering plans. The conceptual recreation plan shall include location, area calculations, dimensions, and general improvements. The approved engineering plans shall be consistent with the conceptual plan.
 - b. A detailed recreation space plan (i.e., landscape specifications, equipment specifications, etc.) consistent with the overall conceptual plan noted in Item "a" above, shall be submitted for review and approval by LUSD and King County Parks, prior to or concurrently with the submittal of the final plat documents.
 - c. A performance bond for recreation space improvements to assure their installation, and the survival of required plantings for a three year period, shall be posted prior to recording of the plat.
16. A homeowners' association or other workable organization shall be established to the satisfaction of LUSD which provides for the ownership and continued maintenance of the recreation and open space areas.
17. Street trees shall be included in the design of all road improvements, and shall comply with Section 5.03 of the KCRS.
 - a. Trees shall be planted at a rate of one tree for every 40 feet of frontage, or more closely (at Applicant's option). Spacing may be modified to accommodate sight distance requirements for driveways and intersections.
 - b. Trees shall be located within the street right-of-way and planted in accordance with Drawing No. 5-009 of the 1993 King County Road Standards, unless LUSD determines that trees should not be located in the street right-of-way.
 - c. If LUSD determines that the required street trees should not be located within the right-of-way, they shall be located no more than 20 feet from the street right-of-way line.
 - d. The trees shall be owned and maintained by the abutting lot owners or the homeowners' association or other workable organization, unless the County has adopted a maintenance program. This shall be noted on the face of the final recorded plat.

- e. The species of trees shall be approved by LUSD if located within the right-of-way, and shall not include poplar, cottonwood, soft maples, gum, any fruit-bearing trees, or any other tree or shrub whose roots are likely to obstruct sanitary or storm sewers, or that is not compatible with overhead utility lines.
- f. The applicant shall submit a street tree plan and bond quantity sheet for review and approval by LUSD prior to engineering plan approval.
- g. The applicant shall contact Metro Service Planning at 684-1622 to determine if 132nd Ave. SE is on a bus route. If 132nd Ave. is a bus route, the street tree plan shall also be reviewed by Metro.
- h. The street trees must be installed and inspected, or a performance bond posted prior to recording of the plat. If a performance bond is posted, the street trees must be installed and inspected within one year of recording of the plat. At the time of inspection, if the trees are found to be installed per the approved plan, a maintenance bond must be submitted or the performance bond replaced with a maintenance bond, and held for one year. After one year, the maintenance bond may be released after DDES has completed a second inspection and determined that the trees have been kept healthy and thriving.

A \$538 landscape inspection fee shall also be submitted prior to plat recording. The inspection fee is subject to change based on the current County fees.

- 18. KCC 16.82.150D applies to the subject property. Therefore, construction work involving soil disturbance, grading, and filling of the site, including individual residential building pad preparation, shall be limited to April 1 through September 30, unless King County DDES specifically approves an extension consistent with the provisions of KCC 16.82.150D. A note stating these requirements shall be clearly shown on the final plat and engineering plans.
- 19. To implement SO-210, the applicant shall comply with the following:
 - a. Documentation shall be provided from a licensed land surveyor to show that the on-site right-of-way for 228th Ave. SE and 132nd Ave. SE, and the area of Tract A (the stormwater facilities tract), does not constitute, in total, more than 30% of the R-1 zoned portion of the site. If the 30% requirement is exceeded, Tract A shall be reduced in size to comply with this requirement, or alternatively, the tract may be removed entirely from the R-1 portion of the subject property.
 - b. The remaining 70% of the R-1 zoned portion of the subject property shall be placed in a contiguous permanent open-space tract, in which the existing native vegetation is retained. Temporary construction fencing shall be provided around the perimeter of the open-space tract to prevent encroachment of construction activities during the development of the proposed subdivision, except as provided as follows.
 - c. All existing buildings within Tract B, the above-noted open-space tract, shall be removed. Construction activities in Tract B shall be limited to the extent feasible

- to remove the existing buildings. A demolition permit shall be secured from DDES for the required demolition, if determined necessary to comply with applicable Code requirements.
- d. A reforestation plan shall be submitted to LUSD for review and approval which provides for the reforestation of the above-noted 70% open-space tract (Tract B). The plan shall include only native species.
 - e. Plantings shall be provided in Tract B, consistent with the approved reforestation plan. A performance bond to assure the installation, and the survival of the required plantings for a five year period shall be posted prior to the recording of the plat.
 - f. Documentation shall be provided to show that the maximum impervious surface in the R-1 zoned portion does not exceed 8%, except as provided in SO-210. (Note that impervious surfaces associated with roadway improvements, i.e., curbs, gutters and sidewalks, may be excluded from the 8% computation.)
 - g. A note shall be placed on the final plat which states that the keeping or grazing of livestock on the 70% open-space tract is prohibited.
20. To implement SO-220, a detailed tree retention plan shall be submitted with the engineering plans for the subject plat. The tree retention and engineering plans shall be consistent with the requirements of SO-220. No clearing of the site is permitted until the tree retention plan is approved by DDES. Flagging and temporary fencing of trees to be retained shall be provided, consistent with SO-220. The placement of impervious surfaces, fill material, excavation work, or the storage of construction materials is prohibited within the fenced areas around preserved trees, except as may be permitted under the provisions of SO-220.
21. Tract B shall be labeled “Native Growth Open Space Tract” on the final plat and engineering plans. The following note shall be shown on the final engineering plan and recorded plat:

RESTRICTIONS FOR NATIVE GROWTH OPEN SPACE TRACT

The vegetation within the Native Growth Open Space Tract may not be cut, pruned, covered by fill, removed or damaged without approval in writing from the King County Department of Development and Environmental Services or its successor agency, unless otherwise provided by law.

The common boundary between the Native Growth Open Space Tract and any area of adjacent development activity must be marked or otherwise flagged to the satisfaction of King County, prior to any clearing, grading, building construction or other development activity on the adjacent parcel. The required marking or flagging shall remain in place until all development activities in the vicinity of the Native Growth Open Space Tract are completed.

ORDERED this 5th day of April, 2001.

R. S. Titus, Deputy
King County Hearing Examiner

TRANSMITTED this 5th day of April, 2001, to the following parties and interested persons:

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Greg Borba
DDES/LUSD
MS OAK-DE-0100

Kim Claussen
DDES/LUSD
Current Planning
MS OAK-DE-0100

Nick Gillen
DDES/LUSD
Site Development Services
MS OAK-DE-0100

Lanny Henoch
DDES/LUSD
Current Planning
OAK-DE-0100

Kristen Langley
KCDOT Roads Division
Traffic and Planning Section
MS KSC-TR-0222

Aileen McManus
KCDOT
Roads Division
MS-KSC-TR-0222

Carol Rogers
DDES/LUSD
MS OAK-DE-0100

Steven C. Townsend
DDES/LUSD
Land Use Inspection
MS OAK-DE-0100

Larry West
DDES/LUSD
Site Development Services
MS OAK-DE-0100

Bruce Whittaker
DDES/LUSD
Engineering Review
MS OAK-DE-0100

NOTICE OF APPLICANT'S RIGHT TO APPEAL

If the Applicant chooses to accept this reconsidered and revised report and decision, the Applicant is requested to formally withdraw appeal by submitting a letter to the Clerk of the Council, with a copy to the Examiner. Thereafter, this report will automatically become effective. However, should the Applicant choose to pursue its March 22, 2001 appeal, the Applicant must file with the Examiner a statement indicating that intention **before April 17, 2001**. Any additional argument or refinement of previously filed argument shall be filed with the Examiner **on or before April 24, 2001**. No new appeal fee will be required. Appeal statements may refer only to facts contained in the hearing record. New facts may not be presented on appeal.

NOTICE OF RIGHT TO APPEAL

In order to appeal the decision of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$125.00 (check payable to King County Office of Finance) *on or before April 17, 2001*. If a notice of appeal is filed, the original and six (6) copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council *on or before April 24, 2001*. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 403, King County Courthouse, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar days of the date of this report, the decision of the hearing examiner contained herein shall be the final decision of King County without the need for further action by the Council.

MINUTES OF THE FEBRUARY 22, 2001 PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L99P3018 – POTTER SUBDIVISION:

R. S. Titus was the Hearing Examiner in this matter. Participating in this hearing and representing the Department was Lanny Henoch. Participating in this hearing and representing the Applicant was Aaron Meilleur of DBM Consulting Engineers and Martin Potter, Applicant. The only other participant in this hearing was Jerry Crawford, Interested Person.

The following exhibits were offered and entered into the record:

- | | |
|----------------|--|
| Exhibit No. 1 | DDES File No. L99P3018 |
| Exhibit No. 2 | DDES Preliminary Report to the Hearing Examiner, dated February 22, 2001 |
| Exhibit No. 3 | SEPA Environmental Checklist, signed by the Applicant on November 30, 1999 |
| Exhibit No. 4 | SEPA Determination of Non-significance, issued on January 19, 2001 |
| Exhibit No. 5 | Affidavit of Posting indicating that a sign was posted on the property on January 27, 2000 giving notice of the filing of the subject application. |
| Exhibit No. 6 | Revised plat map, dated May 31, 2000, received June 12, 2000 |
| Exhibit No. 7 | Land Use Map made up of portions of Kroll maps |
| Exhibit No. 8 | King County Assessors maps—NE ¼ of Section 4, Township 21, Range 5, and the SE ¼ of Section 33, Township 22, Range 5 |
| Exhibit No. 9 | Plan se (6 sheets), prepared by DBM Consulting Engineers, dated May 31, 2000, received June 12, 2000 |
| Exhibit No. 10 | <i>Wetland Delineation and Functional Values Assessment...</i> , prepared by DBM Consulting Engineers, dated June 1, 2000 |
| Exhibit No. 11 | GIS/Zoning boundary map |
| Exhibit No. 12 | Development Condition Query Results, containing SO-210 overlay. |

The following exhibit was entered pursuant to reconsideration:

- | | |
|----------------|---|
| Exhibit No. 13 | Applicant's statement of appeal received by Clerk of the Council, March 22, 2001. |
|----------------|---|